

O'CONNOR PLAYDON GUBEN & INOUE LLP  
A LIMITED LIABILITY LAW PARTNERSHIP

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Attorney for Debtors and  
Debtors-in-Possession  
AGU PLUS, LLC and AGU-V, INC.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF HAWAII

In re  
AGUPLUS, LLC,  
  
Debtor and  
Debtor-in-Possession.

Case No. 19-01529  
Case No. 19-01530  
(Chapter 11)  
(Jointly Administered)

In re  
AGU-V, INC.,  
  
Debtor and  
Debtor-in-Possession.

Confirmation Hearing:  
Date: March 15, 2021  
Time: 2:00 p.m.  
Judge: Honorable Robert J. Faris

**EX PARTE MOTION TO ENLARGE THE TIME TO FILE BALLOT  
TO ACCEPT OR REJECT JOINT PLAN OF REORGANIZATION**

AguPlus, LLC and Agu-V, Inc., hereby move this Court for an Order  
enlarging the time to file a ballot to accept or reject the Plan of Reorganization.

On January 25, 2021, the Debtors filed its Amended Disclosure Statement for the Debtors' Joint Chapter 11 Liquidating Plan Dated January 25, 2021.

The Notice of Filing of Debtors' Amended Disclosure Statement and Debtors' Joint Chapter 11 Liquidating Plan Dated January 25, 2021 (Dkt. No. 452), which were sent to all creditors and parties in interest on January 25, 2021 and January 26, 2021 (Dkt. No. 457).

On February 9, 2021, the Court entered its Order Approving Amended Disclosure Statement for the Debtors' Joint Chapter 11 Liquidating Plan Dated January 25, 2021 ("Order Approving Disclosure Statement") and the Notice to be sent to creditors.

The Court fixed March 8, 2021 as the deadline for creditors to return their Ballots to accept or reject the Plan.

As of March 8, 2021, the following were received:

- Finance Factors, Limited
- Hannan Ribiyou Kubashikigaisha
- Hannan Ribiyou Kubashikigaisha
- Hannan Ribiyou Kubashikigaisha
- CPUC Mockingbird, LP
- LCFRE Sugar Land Town Square, LLC
- REI Food Service LLC
- REI Food Service LLC

On March 9, 2021, the Debtors received the Ballot of the St. Louis Alumni Association, the landlord of the 925 Isenberg Street location. The St. Louis Alumni Association were pre-petition creditors for \$72,265.69.

The St. Louis Alumni Association Ballot was one day late, and it may be outcome determinative. Without the St. Louis Alumni Association Ballot, there were two (2) Class 4 creditors in favor of the Plan and Class 4 creditors, one creditor, REI Food Service LLC, with two (2) claims, rejecting the Plan. The two creditors that accepted the Plan had claim of \$277,278.63. Although the creditors in favor of the Plan constituted 62% of the total claims voting, it did not reach the threshold of 66% required by § 1126(c).

<b>Class</b>	<b>Creditor</b>	<b>Amount</b>	<b>Accept/ Reject</b>
4	CPUC Mockingbird, LP	\$149,695.71	Accept
4	LCFRE Sugar Land Town Square, LLC	\$127,582.92	Accept
4	REI Food Service LLC	\$135,733.23	Reject
4	REI Food Service LLC	\$34,010.12	Reject
4	St. Louis Alumni Association	\$72,265.69	Accept

If the St. Louis Alumni Association claim is accepted, for Section 1126(c) purposes, three (3) of the five (5) Class 4 creditors voted to accept the Plan, satisfying the numerosity requirement of § 1126(c).

The total claims voted by the eligible Class 4 creditors, including the St. Louis Alumni Association was a total of \$519,285 and 67.3% of the \$519,285 is \$349,478. Of the three accepting Class 4 creditors total \$349,542, which satisfies Section 1126(c). If the St. Louis Alumni Association Ballot is allowed, the Plan has satisfied the numerosity and percentage amount of Section 1126(c).

The procedure for allowing a late ballot is set forth in Hanson v. First Bank of South Dakota, 828 F.2d 1310, 1313-14 (8<sup>th</sup> Cir. 1987). Generally, the holder of a claim must accept or reject a plan within the time frame by the court, Rule 3017(c), in this case, was March 8, 2021. However, Rule 9006(b)(1) allows for the enlargement of time.<sup>1</sup>

In the case at bar, the St. Louis Alumni Association filed its Ballot accepting the Plan, the next business, causing no delay and days before the confirmation hearing.

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<sup>1</sup> Rule 9006(b)(1), F.R.Bk.P. provides,

(1) In General. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

This case is different from other “late filed ballot” case.

In Hanson v. First Bank South Dakota, the last day to file a ballot was April 25, 1986. In Hanson, the late ballot was filed on May 9, 1986, 14 days after the deadline. The Court rejected the late ballot, when no party moved under Rule 9006(b)(1) for the enlargement of time.

In In re Miami Tricolor Offset Service Co., 187 B.R. 767, 770 (Bankr.S.D.Fla. 1995), the creditor failed to file a ballot and wanted its objection to confirmation to stand as a vote against the Plan. The last day to submit ballots was August 6, 1995.

On August 1, 1995, the Court advised that the creditor filed a ballot rejecting the plan. But the creditor failed to file a motion requesting the court consider the ballot as having been timely filed.

In In re G-I Holdings, Inc., 420 B.R. 216, 255 n.53 (D.N.J. 2009), the deadline for voting on the plan expired on January 23, 2009 and the Internal Revenue Service filed its vote allowance motion on July 13, 2009, roughly six months after the voting deadline had passed.

In In re Gulfstar Industries, Inc., 236 B.R. 75 (N.D.Fla. 1999), Bankruptcy Court refused to consider untimely ballot where the ballot was not filed, until 11 days after the Court’s deadline for receipt of ballots.

In In re Paul, 1001 B.R. 228 (Bankr.S.D.Cal. 1989) (Bower, J), ... Placement in the mail of ballot accepting or rejecting Chapter 11 plan, on the date ballot was required to be filed with counsel for plan proponent, was not timely. Rules Bankr.Proc.Rule 3018(c) ... However, creditors' ballots rejecting proposed Chapter 11 plan, which were filed late but prior to confirmation hearing, would nevertheless be counted where late filing caused neither delay nor prejudice to debtor and there was no evidence that creditors were acting bad faith. Rules Bankr. Proc. Rule 3018(c). (emphasis supplied)

The St. Louis Alumni Association was one of the original landlords, both pre-petition and post-petition when the Isenberg Street location was reopened in 2020.

Based on the above, the Debtors request this Court allowed the one-day late Alumni Association Ballot be counted as accepting the Plan. As Bankruptcy Judge Peter Bower wrote in In re Paul, even though the ballot was late, the ballot, in that case, rejecting the Plan, was filed prior to confirmation caused neither delay nor prejudice to the debtor and there was no evidence that the creditors were acting in bad faith.

In the case at bar, the St. Louis Alumni Association ballot, one day late, was filed prior to the March 15, 2021 confirmation hearing, will cause no delay, nor prejudice to the parties, and certain there is no evidence of bad faith on

the part of the St. Louis Alumni Association, one of the Debtors' oldest landlord/creditor.

## CONCLUSION

Based on the above, the Debtors request this Court count the Ballot of the St. Louis Alumni Association in the amount of \$72,265.69 accepting the Plan.

On the basis of vote, there are three (3) of the five (5) creditors have accepted the Plan and 67.3% of the amounts voting to accept the Plan.

DATED: Honolulu, Hawaii, March 9, 2021.



JERROLD K. GUBEN  
Attorney for Debtors and  
Debtors-in-Possession  
AGU PLUS, LLC and AGU-V, INC.

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(Non-Hearing Motion)  
Judge: Honorable Robert J. Faris

**DECLARATION OF JERROLD K. GUBEN; EXHIBIT A**

I, Jerrold K. Guben, hereby declare as follows:

1. I am a partner at O'Connor Playdon & Guben LLP, and one of the attorneys for AguPlus, LLC and Agu-V, Inc., Debtors and Debtors-in-Possession (the "Debtors").



2. On March 8, 2012, I emailed to Attorney Peter Stone, the attorney for St. Louis Alumni Association, a former landlord of the Debtor, AguPlus, LLC.

3. Mr. Stone was unable to submit the Ballot on March 8, 2021, but was able to submit the Ballot on March 9, 2021.

4. Attached as Exhibit A, is Attorney Stone's instruction to counsel to file the Ballot accepting the Plan, and authorizing that the attorney for the Debtor affix his "electronic signature /s/" to the Ballot.

5. I then caused the St. Louis Alumni Association to be included on the Tabulation of Ballots filed on March 9, 2021.

6. The Debtor has concurrently filed its Ex Parte Motion to Enlarge the Time to File Ballot to Accept or Reject Joint Plan of Reorganization.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed this 9<sup>th</sup> of March 2021.

  
JERROLD K. GUBEN

## **Jerrold K. Guben**

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**From:** Peter Stone <Peter.Stone@mtglawfirm.com>  
**Sent:** Tuesday, March 9, 2021 1:05 PM  
**To:** Jerrold K. Guben  
**Cc:** Rika Takahashi; Bolton, Johnathan C.  
**Subject:** RE: Ballot St. Louis Alumni Association

You may affix my signature and file it.

Kind regards,

*Peter T. Stone*  
**Managing Attorney**



**TMLF Hawai'i, LLC**  
Ali'i Place  
1099 Alakea Street, Suite 1500  
Honolulu, HI 96813  
Phone: 808-489-9741  
FAX: 808-489-9835  
Email: [Peter.Stone@mtglawfirm.com](mailto:Peter.Stone@mtglawfirm.com)  
Website: <http://mtglawfirm.com>

**We value your opinion! Please feel free to provide feedback on my service at: [CustomerFeedback@mtglawfirm.com](mailto:CustomerFeedback@mtglawfirm.com).**

**REPRESENTATION IN: ARIZONA | CALIFORNIA | HAWAII | OKLAHOMA | OREGON | WASHINGTON**

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**From:** Jerrold K. Guben [mailto:JKG@opgilaw.com]  
**Sent:** Tuesday, March 9, 2021 12:55 PM  
**To:** Peter Stone <Peter.Stone@mtglawfirm.com>  
**Cc:** Rika Takahashi <Rika@aguramen.com>; Bolton, Johnathan C. <jbolton@goodsill.com>  
**Subject:** FW: Ballot St. Louis Alumni Association

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Proposed Attorney for Debtors  
and Debtors-in-Possession,  
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(Non-Hearing Motion)

Judge: Honorable Robert J. Faris

**BALLOT FOR ACCEPTING OR REJECTING  
PLAN OF REORGANIZATION**

AGUPLUS, LLC and AGU-V, INC. filed a Plan of Reorganization (the  
“Plan”) as the Debtors and Debtors-in-Possession in this case. The Court has  
approved the Disclosure Statement (the “Disclosure Statement”) and has authorized

the Debtors to solicit your vote to accept or reject the proposed Plan. The Disclosure Statement provides information to assist you in deciding how to vote your ballot. If you do not have a Disclosure Statement, you may obtain a copy from:

JERROLD K. GUBEN, ESQ.  
O'Connor Playdon Guben & Inouye LLP  
Makai Tower, Suite 2400  
733 Bishop Street  
Honolulu, HI 96813  
Telephone: (808) 524-8350  
Email: [JKG@opgilaw.com](mailto:JKG@opgilaw.com)

Court approval of the Disclosure Statement does not indicate approval of the Plan by the Court.

**You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and your classification and treatment under the Plan. Your claim and/or equity interest has been placed in a class under the Plan. If you hold claims or equity interests in more than one class, you will receive a ballot for each class in which you are entitled to vote.**

**If your Ballot is not received by Jerrold K. Guben, Esq., O'Connor Playdon Guben & Inouye LLP, Makai Tower, Suite 2400, 733 Bishop Street, Honolulu, Hawaii, *on or before March 8, 2021 by 4:00 p.m. Hawaiian Standard Time*, and such deadline is not extended, your vote will not count as either an acceptance or rejection of the Plan.**

The Plan of Reorganization (“Plan”) referred to in this ballot can be confirmed by the Court and thereby made binding on you if it is accepted by the holders of two-thirds (2/3) in amount and more than one-half (1/2) in number of the claims in each class actually voting for or against the Plan, except for classes which have only single creditor.

In the event the requisite acceptances are not obtained, the Court may nevertheless confirm the Plan if the Court finds that the Plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of §1129(b) of the Code.

**CLASS 1: SECURED CLAIM OF FINANCE FACTORS, LLC**

The undersigned, the \_\_\_\_\_ is a secured claimant with an unpaid claim in the amount of \$\_\_\_\_\_.

*[Check one box]*

☐ ACCEPTS

☐ REJECTS

**CLASS 2: SECURED CLAIM OF HANNAN RIBIYOU  
KABUSHIKIGAISHA**

The undersigned, the Class 2 Claimant is a secured claimant with an unpaid claim in the amount of \$\_\_\_\_\_.

*[Check one box]*

☐ ACCEPTS

☐ REJECTS

**CLASS 3: UNSECURED PRIORITY CREDITOR**

The undersigned is a priority creditor or is a claimant with an unpaid claim in the amount of \$\_\_\_\_\_.

*[Check one box]*

☐ ACCEPTS

☐ REJECTS

**CLASS 4: UNSECURED NON-PRIORITY CREDITOR**

The undersigned, the Class 4 Claimant, as an unsecured claimant with an unpaid claim in the amount of \$ \$72,265.69.

*[Check one box]*

☒ ACCEPTS

☐ REJECTS

The Plan of Reorganization is proposed by the Debtor.

CLAIMANT NAME: St. Louis Alumni Association

SIGNATURE: /s/ Peter T. Stone

BY: Peter T. Stone

AS: Attorney

ADDRESS: 1099 Alakea Street, Suite 1500

Honolulu, HI 96813

**Return this signed Ballot *on or before March 8, 2021* to:**

JERROLD K. GUBEN, ESQ.  
O'Connor Playdon Guben & Inouye LLP  
Makai Tower, Suite 2400  
733 Bishop Street  
Honolulu, HI 96813  
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